

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

TIMOTHY EUGENE ROZIER,

Plaintiff,

v.

PIERCE COUNTY, *et al.*,

Defendants.

Case No. C23-5724-TSZ-SKV

ORDER WITHDRAWING REPORT AND  
RECOMMENDATION AND GRANTING  
APPLICATION TO PROCEED *IN FORMA*  
*PAUPERIS*

This is a civil rights action proceeding under 42 U.S.C. § 1983. On August 10, 2023, Plaintiff submitted his complaint to the Court for filing together with an application to proceed with this action *in forma pauperis* (“IFP”). *See* Dkt. 1. However, Plaintiff failed to submit with his IFP application the required prison trust account statement. Thus, on August 11, 2023, the Clerk sent Plaintiff a letter advising him of this deficiency and explaining that he would have to correct the deficiency by September 11, 2023, or risk dismissal of this action. Dkt. 2. Plaintiff failed to timely correct the noted deficiency, and on September 12, 2023, the Honorable Brian A. Tsuchida, United States Magistrate Judge, issued a Report and Recommendation recommending

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1 that this action be dismissed if Plaintiff failed to either pay the filing fee or submit a sufficient  
2 IFP application by September 28, 2023. Dkt. 3.

3 On September 20, 2023, Plaintiff filed a motion seeking an extension of time until  
4 November 10, 2023, to cure his deficient IFP application. Dkt. 4. The following day, Judge  
5 Tsuchida granted the requested extension and re-noted the Report and Recommendation for  
6 consideration on November 10, 2023. Dkt. 5. On September 22, 2023, this action was  
7 reassigned to United States District Judge Thomas S. Zilly and to the undersigned. *See* Dkt.  
8 Entry dated 09/22/2023. Shortly thereafter, on September 28, 2023, Plaintiff corrected the  
9 deficiency in his IFP application by submitting his prison trust account statement. *See* Dkt. 7.

10 Because Plaintiff has now corrected the deficiency that prompted issuance of the Report  
11 and Recommendation, this Court deems it appropriate to withdraw the previously issued Report  
12 and Recommendation and rule on Plaintiff's pending IFP application. Accordingly, the Court,  
13 hereby ORDERS as follows:

14 (1) The Report and Recommendation issued by Judge Tsuchida on September 12,  
15 2023 (Dkt. 3), is WITHDRAWN.

16 (2) Plaintiff's application to proceed IFP (Dkt. 7) is GRANTED as Plaintiff's  
17 declaration indicates that he is unable to afford the Court's filing fee or give security therefore.  
18 As set forth below, an initial partial filing fee will be collected, and Plaintiff is thereafter required  
19 to make monthly payments of 20 percent of the preceding month's income credited to his  
20 account until the full amount of the filing fee is satisfied.

21 Pursuant to 28 U.S.C. § 1915, and Plaintiff's approved application to proceed *in forma*  
22 *pauperis*, the agency having custody of the above-named Plaintiff is directed to calculate an  
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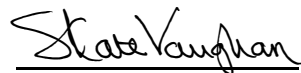
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1 initial partial filing fee equal to 20 percent of the greater of either: (a) the average monthly  
2 deposits to the prisoner's account; or (b) the average monthly balance in the prisoner's account  
3 for the 6-month period immediately preceding the date of this Order. The initial partial filing fee  
4 should be forwarded to the Clerk of Court as soon as practicable.

5 Subsequently, if the prisoner's account exceeds \$10.00, each month the agency having  
6 custody of the prisoner is directed to collect and forward payments equal to 20 percent of the  
7 prisoner's preceding month's income credited to the prisoner's account. In the event that the  
8 monthly payment would reduce the prisoner's account below \$10.00, the agency should collect  
9 and forward only that amount which would reduce the prisoner's account to the \$10.00 level.  
10 Please note that this \$10.00 limit does not apply to the initial partial filing fee described above.  
11 Finally, the monthly payments should be collected and forwarded to the Court until the entire  
12 filing fee (\$350.00) for this matter has been paid.

13 (3) The Clerk is directed to send copies of this Order to Plaintiff, to the financial  
14 officer of this Court, to the agency having custody of Plaintiff, and to the Honorable Thomas S.  
15 Zilly.

16 Dated this 13th day of October, 2023.

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19 S. KATE VAUGHAN  
20 United States Magistrate Judge  
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